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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG LEWIS GREEN,

Defendant and Appellant.

2d Crim. No. B288629
(Super. Ct. No. 17F-10108)
(San Luis Obispo County)

Appellant Craig Lewis Green was charged with one count of resisting an executive officer (Pen. Code, § 69).¹ The second amended information alleged that appellant personally inflicted great bodily injury in the commission of the offense (§ 12022.7, subd. (a).) It further alleged that appellant suffered eight priors: one prior strike (§§ 667, subds. (d), (e), 1170.12, subds. (b), (c)); one prior serious felony (§ 667, subd. (a)); and six prior prison terms (§ 667.5, subd. (b)).

¹ All further statutory references are to the Penal Code.

A jury convicted appellant of resisting an executive officer and found the great bodily injury allegation not true. The trial court found true all eight priors. It sentenced appellant to the high term of three years, doubled due to the strike prior (§§ 667, subds. (d), (e), 1170.12, subds. (b), (c)). The court struck as inapplicable the five-year term for the prior serious felony. It imposed and stayed a one-year term for one of the prior prison terms as duplicative of the strike prior. The court then added one consecutive year for each of the remaining five prior prison terms, for a total prison term of 11 years.

The Attorney General concedes, and we agree, that appellant's sentence should not have been enhanced based on the "prior" prison term he was serving at the time of the current offense. We reverse the trial court's finding on the third prison prior (§ 667.5, subd. (b)), but otherwise affirm the judgment.

FACTS

At the time of the current offense, appellant was serving a prison term for a November 10, 2016 conviction in San Bernardino County, Case No. 16CR032197. While three correctional officers were escorting appellant from his dormitory to a medical evaluation unit, appellant turned and struck one officer in the chest with his elbow. The officers grabbed appellant's upper body and legs, and took him to the ground. Appellant kicked Officer Richard Farley, the named victim, in the right shoulder area. Officer Farley suffered scrapes, bruises and shoulder impingement. The other two officers suffered minor injuries.

DISCUSSION

Appellant argues that his sentence should not have been enhanced based on the “prior” prison term he was still serving at the time of the current offense. He is correct.

A prison sentence is enhanced by one consecutive year for each separate prior prison term, defined as “a continuous completed period of prison incarceration.” (§ 667.5, subds. (b), (g).) “Imposition of a sentence enhancement under . . . section 667.5 requires proof that the defendant . . . completed that term of imprisonment.” (*People v. Tenner* (1993) 6 Cal.4th 559, 563.) In *People v. Weeks* (2014) 224 Cal.App.4th 1045, 1051 (*Weeks*), the court held that the defendant’s 2006 offense did not constitute a prior prison term under section 667.5, subdivision (b) because he had yet to complete the prison term for that offense at the time the new offenses took place.

Here, at the time of the current offense, appellant was serving a prison term for his 2016 conviction. Because appellant had not yet completed his prison term for the 2016 conviction, the trial court erred by enhancing appellant’s sentence by one consecutive year for that term. (*Weeks, supra*, 224 Cal.App.4th at p. 1051.)

DISPOSITION

The trial court’s finding on appellant’s third prior offense (conviction date November 10, 2016, in the County of San Bernardino) is reversed as it relates to section 667.5, subdivision (b). The trial court is directed to issue an amended abstract of judgment (1) without the third prison prior, and (2) reflecting that appellant’s total prison term is 10 years. The court shall forward the amended abstract of judgment to the California

Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Dodie A. Harman, Judge
Superior Court County of San Luis Obispo

Earl E. Conaway, III, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, and Nancy Lii Ladner, Deputy Attorney General, for Plaintiff and Respondent.